

ORDINANCE NO. 3116

STATE OF ILLINOIS
CITY OF COLUMBIA
FILED FOR RECORD

AN ORDINANCE TO AUTHORIZE THE MAYOR OF THE CITY OF COLUMBIA, ILLINOIS TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE HEARTLANDS CONSERVANCY, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, THE EQUITY TRUST COMPANY CUSTODIAN FBO BRIAN PENDLETON IRA, AND THE EQUITY TRUST COMPANY CUSTODIAN FBO DAVID WITTENAUER IRA TO SUPPORT COOPERATIVE EFFORT TO RECLAIM THE FORMER VIDEO EXCHANGE SITE IN THE CITY OF COLUMBIA, ILLINOIS

AUG - 4 2014


City Clerk

WHEREAS, in 1996 the City of Columbia, Illinois (hereinafter "the City") formed the Admiral Parkway Redevelopment Area (hereinafter "the Area") to address blight, especially chronic flooding, in the property adjacent to Illinois Route 3; and

WHEREAS, flooding has negatively impacted the commercial property at 1019 Valmeyer Rd. in Columbia, Illinois (hereinafter "the Site") formerly developed as the Video Exchange and now owned jointly by the Equity Trust Company Custodian fbo Brian Pendleton IRA (hereinafter, "Pendleton IRA") and the Equity Trust Company Custodian fbo David R. Wittenauer IRA (hereinafter, "Wittenauer IRA") so as to prevent current use or redevelopment of the parcel; and

WHEREAS, in 2012 the City adopted a master plan for the Admiral Trost Subdivision Park (hereinafter "Park Plan") that envisioned wetlands restoration as a central part of future development of that property, as well as providing some additional retention for stormwater; and

WHEREAS, in 2013 the City endorsed an application by the HeartLands Conservancy (hereinafter "the Conservancy") for an Illinois Green Infrastructure Grant ("IGIG") and at the same time granted the Conservancy use of City property and matching funds for a wetlands restoration project that will address flooding and help to develop the Area per the vision articulated in the Park Plan; and

WHEREAS, the Conservancy anticipates, as part of the Park Plan funded by the IGIG, removal of soil from the Area which may either be used at other site(s) in the floodplain or disposed of at other site(s) outside the flood plain at a more significant cost; and

WHEREAS, the City, the Conservancy, the Pendleton IRA and the Wittenauer IRA have agreed that it is necessary and desirable to coordinate efforts to pursue implementation of the Park Plan, reduce flooding in the Area and help to reclaim the Site, as set forth in the attached Memorandum of Understanding (hereinafter "MOU").

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois, does hereby authorize the agreement with the Conservancy, the Pendleton IRA and the Wittenauer IRA as set out in the attached MOU, and does further authorize and direct the Mayor to execute and deliver this MOU, in the form attached hereto, evidencing such an agreement with the aforementioned parties, which MOU is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 3. This Ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Niemietz, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Huch, Reis and Holtkamp.

NAYS: None.

ABSENT: Aldermen Roessler and Mathews.

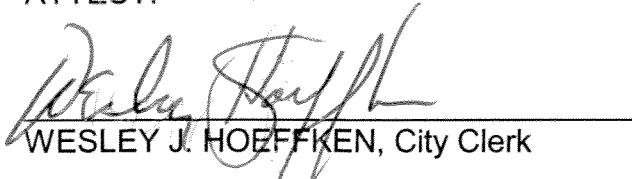
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor, this 4th day of August, 2014.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



WESLEY J. HOEFFKEN, City Clerk

(SEAL)

MEMORANDUM OF UNDERSTANDING – FORMER VIDEO EXCHANGE PROPERTY

**MEMORANDUM OF UNDERSTANDING
between the
CITY OF COLUMBIA
the
HEARTLANDS CONSERVANCY
the
EQUITY TRUST COMPANY CUSTODIAN FBO BRIAN PENDLETON IRA
and the
EQUITY TRUST COMPANY CUSTODIAN FBO DAVID R. WITTENAUER IRA**

This Memorandum of Understanding (“MOU”) is made and entered into as of July 21, 2014 (“Effective Date”) by and between the following: the Heartlands Conservancy, an Illinois not-for-profit corporation (hereinafter, “Conservancy”); the Equity Trust Company Custodian fbo Brian Pendleton IRA (hereinafter, “Pendleton IRA”); the Equity Trust Company Custodian fbo David R. Wittenauer IRA (hereinafter, “Wittenauer IRA”); and the City of Columbia, an Illinois municipal corporation (hereinafter, “the City”).

WHEREAS, in 1996 the City formed the Admiral Parkway Redevelopment Area to address blight, especially chronic flooding, in the property adjacent to Illinois Route 3; and

WHEREAS, flooding has negatively impacted the commercial property at 1019 Valmeyer Rd. in Columbia, Illinois (hereinafter “the Site”), formerly developed as the Video Exchange and now owned jointly by the Pendleton IRA and the Wittenauer IRA, so as to prevent current use or redevelopment of the parcel; and

WHEREAS, in 2012 the City adopted a master plan for the Admiral Trost Subdivision Park (hereinafter “Park Plan”) that envisioned wetlands restoration as a central part of future development of that property, as well providing some additional retention for stormwater; and

WHEREAS, in 2013 the City endorsed an application by the Conservancy for an Illinois Green Infrastructure Grant (“IGIG”) and at the same time granted the Conservancy use of City property and matching funds for a wetlands restoration project that will address flooding and help to develop the area per the vision articulated in the Park Plan; and

MEMORANDUM OF UNDERSTANDING – FORMER VIDEO EXCHANGE PROPERTY

WHEREAS, the Conservancy anticipates removing as much as 17,000 cubic yards of soil from the park area which may either be used at other site(s) in the floodplain or disposed of at other site(s) outside the flood plain at a more significant cost.

THEREFORE, in consideration of common goals that may only be achieved through cooperation, the City, the Conservancy, the Pendleton IRA and Wittenauer IRA agree as follows:

Section 1. Purpose

All four parties cited in the preamble hereby agree to pursue cooperative action as stipulated and under the terms & conditions set out in the following Sections.

Section 2. City's Responsibilities

The City agrees to undertake the following actions as its responsibilities under this MOU:

1. Secure a 404 permit from the Army Corps of Engineers to install a larger culvert under Valmeyer Rd. (albeit the engineering firm designing the culvert may be subcontracted to execute this responsibility);
2. Install larger culvert under Valmeyer Rd.

Section 3. Conservancy's Responsibilities

The Conservancy agrees to undertake the following actions as its responsibilities under this MOU:

1. Secure Illinois Green Infrastructure Grant (IGIG), if awarded and selected for the grant by the Illinois EPA;
2. Secure conditional 404 permit for IGIG project activities in floodway;
3. Manage, in coordination with the City, the design/build project for wetlands restoration and expansion; and
4. As part of the design / build contract, provide soil from IGIG project to Site so as to raise entire parcel by, at minimum, one foot (compacted) above the designated 100-year flood plain per the Flood Insurance Rate Maps (FIRM). Soil will be delivered to an agreed location on to the Site uncompacted for future placement/compaction by the Pendleton IRA and the Wittenauer IRA. This soil will be provided to the Site once all necessary local, state, and federal permits and approvals (by others) are secured for the Site to be able to place fill. Permits shall be secured so as to not delay the IGIG project schedule.
5. The Conservancy's design/build contractor shall deliver soil to the Site only and shall not be responsible for compaction, grading, or soil testing. Soil will be delivered "as-is" subject to #2 below in Section 4.

Section 4. Responsibilities of the Pendleton and Wittenauer IRAs

The Pendleton IRA and the Wittenauer IRA each hold 50% undivided interest in the Site and agree, working together, to undertake the following actions as their responsibilities under this MOU:

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1. Remove structure (former Video Exchange) and pavement from the Site;
2. Perform soil testing and/or borings in the park area (IGIG project area) to determine the suitability of the soil for the Site and shall notify the City and the Conservancy in writing whether the soil meets their criteria in a timely manner in advance of the scheduled removal of the soil from the IGIG project and identifying the location on the Site where the soil shall be stockpiled for future placement by the Pendleton IRA and the Wittenauer IRA.
3. Secure Conditional Letter of Map Revision Base on Fill (CLOMR) from FEMA;
4. Grade and compact dirt from IGIG project when delivered to the Site; and
5. Secure Letter of Map Revision from FEMA once the Site is filled, graded and compacted

Section 5. Schedule

The tentative schedule for performance of the actions listed above is as follows:

1. Secure a 404 permit from the Army Corps of Engineers – within six (6) months of the date of execution for this MOU;
2. Install larger culvert under Valmeyer Rd- within eighteen (18) months of the date of execution for this MOU;
3. Secure Illinois Green Infrastructure Grant (IGIG) – application has been made and awards should be announced by July 1, 2014;
4. Secure conditional 404 permit for IGIG project activities in floodway – within six (6) months following the awards announcement;
5. Secure Conditional Letter of Map Revision Based on Fill (CLOMR) from FEMA within six (6) months following the award announcement;
6. Remove structure (former Video Exchange) and pavement from Site – within twelve (12) months following the awards announcement (albeit this action will need to be coordinated with the action in 6, below);
7. Provide dirt from IGIG project to Site so as to raise entire parcel – within eighteen (18) months following the awards announcement (this action will need to be coordinated with the action in 5, above);
8. Secure Letter of Map Revision (LOMR) from FEMA – within twenty four (24) months following the awards announcement

Items 4-8 are dependent upon receipt of the IGIG and the awards announcement may be delayed from the aforementioned date; therefore, this schedule must be adjusted from the actual date of awards announcement.

Section 6. Independent Contractors

- A. In the performance of this MOU, the City, the Conservancy, the Pendleton IRA and Wittenauer IRA will be acting in an individual capacity and not as agents, employees, partners or joint ventures or associates of one another. The agent or employees of one shall not be construed to be the agents or employees of the other. City employees shall remain employees of the City, notwithstanding the fact that they may assist the Conservancy, the Pendleton IRA and/or the Wittenauer IRA.

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B. Neither the City nor its agents, volunteers, servants, employees or officials shall be responsible or liable for any claim or suit arising from contracts, MOUs, understandings or arrangements made by the Conservancy, the Pendleton IRA or the Wittenauer IRA with any person or entity covering services or goods procured by the Conservancy, the Pendleton IRA or the Wittenauer IRA, or for the negligent or willful acts of the Conservancy, the Pendleton IRA or the Wittenauer IRA or those for whom the Conservancy, the Pendleton IRA or the Wittenauer IRA acts.

Section 7. Term

A. The term of the MOU will be for three (3) years, effective August 4, 2014 through August 4, 2017. This MOU may be renewed for an additional three-year term with the written consent of all four parties;

B. Notwithstanding this, the MOU may be terminated for cause in writing by any of the four parties with sixty (60) days' notice, as provided in Section 9.

Section 8. Dispute Resolution

The parties agree that if there is a dispute as to any provision of this MOU or if any party materially breaches or fails to perform its obligations under this MOU, the other parties may give notice in writing of the dispute or material breach. The parties agree to meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or such longer period, if agreed to in writing by the parties, the parties agree to bring in a mediator to help resolve the dispute.

Section 9. Notice

Any notice or notices required or permitted to be given pursuant to this MOU shall be given by certified mail, postage prepaid, return receipt required, as follows:

To the City:

City of Columbia
208 S. Rapp Ave.
Columbia, IL 62236

To the Conservancy:

HeartLands Conservancy
406 E. Main St.
Mascoutah, IL 62258

To Brian Pendleton:

Brian Pendleton
400 E. Monroe Ave
Kirkwood, MO 63122

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To David Wittenauer:

David Wittenauer
1177 N. Green Mount Rd.
Ste 201
O'Fallon, IL 62269

Section 10. Termination

- A. This MOU is dependent, in part, upon awarding of a grant; as such, stipulations of this MOU subject to the grant award shall become null and void if the grant is not awarded;
- B. This MOU may be terminated by any of the four parties by delivering written notice of termination to the non-terminating parties at least ninety (90) days prior to the effective date of any termination.

Section 11. Governing Law and Venue

This MOU shall be deemed to be an Illinois contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the law of the State of Illinois and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this MOU shall be deemed to have been delivered and accepted by the parties in the State of Illinois. The Conservancy, the Pendleton IRA and the Wittenauer IRA shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or thereafter adopted, in the performance of its obligations set forth herein. Any and all suits for any claims or for any and every breach of dispute arising out of this MOU shall be maintained in the appropriate court of competent jurisdiction in Monroe County, Illinois.

Section 12. Severability

Any provision of this MOU which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 13. Entire MOU

- A. The parties agree that this writing constitutes the entire MOU of the parties and that there may be no modification to this MOU, except in writing, executed by the authorized representatives of the City, the Conservancy, the Pendleton IRA and/or the Wittenauer IRA;
- B. Notwithstanding the above, the schedule set out in Section 5 may be amended with the agreement of all four parties without modifying the MOU.

(Signature page to follow)

MEMORANDUM OF UNDERSTANDING – FORMER VIDEO EXCHANGE PROPERTY

As evidenced by their MOU to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF COLUMBIA, ILLINOIS

Honorable Kevin B. Hutchinson, Mayor

HEARTLANDS CONSERVANCY

David Eustis, President

EQUITY TRUST COMPANY CUSTODIAN FBO BRIAN PENDLETON IRA
50% UNDIVIDED INTEREST

_____ (Authorized representative)

EQUITY TRUST COMPANY CUSTODIAN FBO DAVID R. WITTENAUER IRA
50% UNDIVIDED INTEREST

_____ (Authorized representative)